

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
NORTHERN DIVISION

JOSEPH R. HESS

PLAINTIFF

v.

No. 3:20-cv-51-DPM

CHRISTIAN UNDERWOOD

DEFENDANT

ORDER

1. Hess hasn't responded to Underwood's motion for summary judgment. The Court alerted Hess to the motion, twice extended the time to respond, and warned that it would rule on the current papers if Hess didn't respond. *Docs. 25 & 28-29*. He didn't.

2. Motion for summary judgment, *Doc. 22*, granted. Underwood has offered evidence that he didn't mace Hess; and Hess hasn't met proof with proof to create a genuine dispute of material fact. *Conseco Life Insurance Co. v. Williams*, 620 F.3d 902, 909-10 (8th Cir. 2010). Taking the record in the light most favorable to Hess, he was maced by an unidentified short officer at the home and then again at the jail by a Greene County officer. But, on this record, there was no Fourth Amendment violation by Underwood. Hess's excessive force claim against Underwood will therefore be dismissed with prejudice. Any official capacity claim is dismissed with prejudice, too, for lack of an underlying constitutional violation. *Wilson v. Spain*, 209 F.3d 713, 717 (8th Cir. 2000).

So Ordered.

DP Marshall Jr.  
D.P. Marshall Jr.  
United States District Judge

21 June 2021